

FIRST REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 107
91ST GENERAL ASSEMBLY

Taken up for Perfection March 12, 2001.

House Substitute for House Committee Substitute for House Bill No. 107 ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

0162L.03P

AN ACT

To repeal section 537.675, RSMo 2000, relating to judicial and administrative procedures, and to enact in lieu thereof eight new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 537.675, RSMo 2000, is repealed and eight new sections enacted in
2 lieu thereof, to be known as sections 476.777, 537.675, 537.678, 537.681, 537.684, 537.687,
3 537.690 and 537.693, to read as follows:

476.777. 1. There is hereby established in the state treasury a special fund, to be
2 **known as the "Missouri CASA Fund". The state treasurer shall credit to and deposit in**
3 **the Missouri CASA fund all moneys which may be appropriated to it by the general**
4 **assembly and also any gifts, contributions, grants, bequests or other aid received from**
5 **federal, private or other sources. The general assembly may appropriate moneys into the**
6 **fund to support the court-appointed special advocate (CASA) program throughout the**
7 **state.**
8 **2. The state treasurer shall invest moneys in the Missouri CASA fund in the same**
9 **manner as surplus state funds are invested pursuant to section 30.260, RSMo. All earnings**
10 **resulting from the investment of moneys in the fund shall be credited to the Missouri**
11 **CASA fund.**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 **3. The state courts administrator shall administer and disburse moneys in the**
13 **Missouri CASA fund based on the following requirements:**

14 **(1) The office of state courts administrator shall set aside funding for new start-up**
15 **CASA programs throughout the state;**

16 **(2) Every recognized CASA program shall receive a base rate allocation, with**
17 **availability of additional funding based on the number of children with abuse or neglect**
18 **cases under the jurisdiction of the court; and**

19 **(3) All CASA programs being considered for funding shall be recognized by and**
20 **affiliated with the state and national CASA associations.**

21 **4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys**
22 **in the Missouri CASA fund shall not revert to the credit of the general revenue fund at the**
23 **end of the biennium.**

 537.675. 1. As used in sections 537.675 to 537.693, the following terms mean:

2 **(1) "Annual claims", a period of time commencing on the first day of January of**
3 **every year after December 31, 2002, and ending on the last day of such calendar year. The**
4 **annual claims period for year 2002 begins on January 1, 2002, and ends on December 31,**
5 **2002;**

6 **(2) "Commission", the labor and industrial relations commission;**

7 **(3) "Division", the division of workers' compensation;**

8 **(4) "Initial claims period", a period of time commencing on the effective date of**
9 **sections 537.675 to 537.693 and ending on December 31, 2002;**

10 **(5) "Uncompensated tort victim", a person who:**

11 **(a) Is a party in a personal injury or wrongful death lawsuit; or**

12 **(b) Is a tort victim whose claim against the tortfeasor has been settled for the policy**
13 **limits of insurance covering the liability of such tortfeasor and such policy limits are**
14 **inadequate in light of the nature and extent of damages due to the personal injury or**
15 **wrongful death;**

16 **(c) Unless described in paragraph (b) of this subdivision:**

17 **a. Has obtained a final monetary judgment in the lawsuit described in paragraph**
18 **(a) of this subdivision against a tortfeasor for personal injuries, or wrongful death in a case**
19 **in which all appeals are final;**

20 **b. Has exercised due diligence in enforcing the judgment; and**

21 **c. Has not collected the full amount of the judgment;**

22 **(d) Is not a corporation, company, partnership or other incorporated or**
23 **unincorporated commercial entity;**

24 **(e) Is not any entity claiming a right of subrogation;**

25 (f) Was not on house arrest and was not confined in any federal, state, regional,
26 county or municipal jail, prison or other correctional facility at the time he or she sustained
27 injury from the tortfeasor;

28 (g) Has not pleaded guilty to or been found guilty of two or more felonies, where
29 such two or more felonies occurred within ten years of the occurrence of the tort in
30 question, and where either of such felonies involved a controlled substance or an act of
31 violence; and

32 (h) Is a resident of the state of Missouri or sustained personal injury or death by
33 a tort which occurred in the state of Missouri.

34 2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the
35 fund shall not lapse at the end of the biennium as provided in section 33.080, RSMo.

36 [2. Fifty percent of any final judgment awarding punitive damages after the deduction
37 of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The
38 circuit clerks shall notify the attorney general of any final judgment awarding punitive damages
39 rendered in their circuits. With respect to such fifty percent, the attorney general shall collect
40 upon such judgment, and may execute or make settlements with respect thereto as he deems
41 appropriate for deposit into the fund.]

42 3. Any party receiving a final judgment of punitive damages in any case filed in any
43 division of any circuit court of the state of Missouri shall notify the attorney general of the
44 state of Missouri of such award, except for actions claiming improper health care pursuant
45 to chapter 538, RSMo. Such notice shall be in writing and shall be provided when the
46 award of punitive damages becomes final. The state of Missouri shall have a lien for
47 deposit into the tort victims' compensation fund to the extent of fifty percent of punitive
48 damages awarded by final judgment in any such case after deduction of attorney's fees and
49 expenses, which lien shall attach when the final judgment is rendered and all appeals
50 become final and the attorney's claim for fees and expenses is paid. In each case, the
51 attorney general shall serve a lien notice by certified mail or registered mail upon the party
52 or parties against whom the state has a claim for collection of its share of the punitive
53 damages award. On a petition filed by the state, the court, on written notice to all
54 interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien
55 shall not be satisfied out of any recovery until the attorney's claim for fees and expenses
56 is paid. Cases resolved by arbitration, mediation or compromise settlement prior to final
57 judgment are exempt from the provisions of this section. Nothing in this section shall
58 hinder or in any way affect the right or ability of the parties to any claim or lawsuit to
59 compromise or settle such claim or litigation on any terms and at any time the parties
60 desire.

61 [3.] **4.** The state of Missouri shall have no interest in or right to intervene at any stage
62 of any judicial proceeding [under] **pursuant to this section, except to enforce its lien rights as**
63 **provided in subsection 3 of this section.**

64 [4. No disbursement shall be made from the tort victims' compensation fund until
65 procedures for disbursement are established by further action of the general assembly.]

66 **5.** There is hereby established in the state treasury the "Legal Services for Low-
67 Income People Fund", which shall consist of thirty-five percent of all payments received
68 into the tort victims' compensation fund regardless of source or designation. Moneys,
69 funds or payments paid to the credit of the legal services for low-income people fund shall,
70 at least annually and upon appropriation, be distributed to the legal services organizations
71 in Missouri which are recipients of federal Legal Services Corporation funding and shall
72 be used for no other purpose than as authorized pursuant to sections 537.675 to 537.693.
73 The funds so distributed shall be used by legal services organizations in Missouri to
74 provide legal services to its low-income population in the manner approved by the board
75 of directors of each legal services organization. Funds shall be allocated in accordance
76 with the most recent official census data from the Bureau of Census of the United States
77 Department of Commerce for people in poverty residing in Missouri. Notwithstanding the
78 provisions of section 33.080, RSMo, any balance remaining in the legal services for low-
79 income people fund at the end of any biennium shall not be transferred to general revenue,
80 but shall remain in the fund and be distributed in accordance with the provisions of this
81 section.

537.678. 1. Sixty-five percent of all payments received by the tort victims'
2 compensation fund regardless of source or designation shall, upon appropriation, be
3 appropriated to the division of workers' compensation to assist uncompensated tort victims
4 and shall be used for no other purpose. Notwithstanding the provisions of section 33.080,
5 RSMo, any balance remaining in the budget of the division of workers' compensation for
6 compensation of uncompensated tort victims shall not be transferred to general revenue
7 but shall remain in the fund.

8 **2.** The division of workers' compensation shall, pursuant to the provisions of
9 sections 537.678 to 537.693, have jurisdiction to determine and award compensation to or
10 on behalf of uncompensated tort victims. The requirement that the uncompensated tort
11 victim has obtained a final judgment may be waived by the division based upon the
12 tortfeasor's bankruptcy, inability to identify the tortfeasor, inability to obtain service of
13 process on the tortfeasor after making a good faith effort to do so, or the claim against the
14 tortfeasor has been settled for the insurance policy limits available to cover the liability of
15 such tortfeasor and such policy limits are inadequate in light of the injury suffered by the

16 tort victim. The division shall not be required to award compensation or to award the full
17 amount claimed. The division shall base its award of compensation upon independent
18 verification obtained during its investigation. In no case shall the amount paid to the
19 individual exceed the lesser of either the net award granted by the court or jury or the
20 amount remaining in the tort victims' compensation fund; provided that no award shall
21 exceed three hundred thousand dollars.

22 3. Claims shall be made by filing an application for compensation with the division.
23 The division shall furnish an application form which shall include:

24 (1) The name and address of the uncompensated tort victim;

25 (2) If the claimant is not the uncompensated tort victim, the name and address of
26 the claimant and relationship to the victim, the name and address of any dependents of the
27 victim, and the extent to which each is so dependent;

28 (3) The date and nature of the tort on which the application for compensation is
29 based;

30 (4) The date and court in which a judgment was rendered against the tortfeasor,
31 including the judgment amount specifying medical costs, if available. If no final judgment
32 was obtained and the claimant is requesting a waiver pursuant to subsection 2 of this
33 section, the application shall include a statement establishing the basis for a waiver;

34 (5) The nature and extent of the injuries sustained by the victim, the names and
35 addresses of those giving medical and hospital treatment to the victim and whether death
36 resulted;

37 (6) The loss to the claimant or a dependent resulting from the injury or death;

38 (7) The amount of benefits, payments or awards, if any, payable from any source
39 that the claimant or dependent has received or for which the claimant or dependent is
40 eligible as a result of the injury or death;

41 (8) Releases by the claimant authorizing any reports, documents and other
42 information relating to the matters specified pursuant to this section to be obtained by the
43 division; and

44 (9) Any other information as the division determines is necessary.

45 4. In addition to the application, the division may require that the claimant submit
46 materials substantiating the facts stated in the application.

47 5. If the division finds that an application does not contain the required
48 information or that the facts stated therein have not been substantiated, the division shall
49 notify the claimant in writing of the specific additional items or information or materials
50 required and that the claimant has thirty days from the date of mailing in which to furnish
51 such items to the division. Unless a claimant requests and is granted an extension of time

52 by the division, the division may reject, without prejudice to refile of another application
53 for the same matter, the claim of the claimant for failure to file the additional information
54 or materials within the specified time. Extensions of time to file such additional
55 information shall be freely granted.

56 6. The claimant may file an amended application or additional substantiating
57 materials to correct inadvertent errors or omissions at any time before the division has
58 completed its consideration of the original application.

59 7. Any state or local agency, including a prosecuting attorney or law enforcement
60 agency, shall make available without cost to the fund all reports, files and other
61 appropriate information that the division requests to make a determination that a claimant
62 is eligible for an award pursuant to sections 537.675 to 537.693.

63 8. Any notice required pursuant to sections 537.675 to 537.693, with the exception
64 of the lien notice required by subsection 3 of section 537.675, shall be sent by first class
65 mail, postage prepaid to the party's last known address or to the last known address of the
66 party's attorney or other legal representative.

537.681. 1. The following persons shall be eligible for compensation pursuant to
2 sections 537.675 to 537.693:

3 (1) An uncompensated tort victim; and

4 (2) In the case of the death of the uncompensated victim as a direct result of the
5 tort:

6 (a) The class of persons identified in subsection 1 of section 537.080; and

7 (b) Any relative of the uncompensated tort victim who legally assumes the
8 obligation for or who has incurred medical or burial expenses as a direct result of the tort
9 at issue.

10 2. An uncompensated tort victim that is found personally liable on a cross-
11 complaint of tort or found to have been contributorily or comparatively negligent shall
12 only be eligible to receive compensation to the extent of the favorable net amount awarded
13 by the judge or jury. No uncompensated tort victim or dependent or other eligible
14 claimant shall be denied compensation solely because such person is a relative of the
15 tortfeasor or was living with the tortfeasor as a family or household member at the time
16 of the injury or death. The division, however, may award compensation to a victim or
17 other eligible claimant only if the division can reasonably determine that the tortfeasor will
18 receive no substantial economic benefit or unjust enrichment from the compensation.

19 3. The division may waive the requirements of paragraph (f) of subdivision (5) of
20 subsection 1 of section 537.675 if it determines that the interest of justice would be served
21 by doing so.

22 **4. No compensation of any kind shall be made to an uncompensated victim or**
23 **intervenor injured while confined in any federal, state, county or municipal jail, prison or**
24 **other correctional facility, including house arrest.**

25 **5. In the case of an uncompensated tort victim or other eligible claimant who is**
26 **incarcerated as a result of a conviction of a crime not related to the incident that is the**
27 **basis for the claimant's application:**

28 **(1) The division shall suspend all proceedings and payments until such time as the**
29 **uncompensated tort victim or other eligible claimant is released from incarceration;**

30 **(2) The division shall notify the claimant at the time the proceedings are suspended**
31 **of the right to reactivate the claim within six months of his or her release from**
32 **incarceration;**

33 **(3) The uncompensated tort victim or other eligible claimant may file an**
34 **application to request that the case be reactivated not later than six months after the date**
35 **he or she is released from incarceration. Failure to file such request within the six-month**
36 **period shall serve as a bar to any recovery.**

537.684. 1. A claim for compensation may be filed by a person eligible for
2 **compensation or, if the person is an incapacitated or disabled person, or a minor, by the**
3 **person's spouse, parent, conservator or guardian.**

4 **2. A claim shall be filed not later than two years after the judgment upon which it**
5 **is based becomes final and all appeals are final, except with regard to the initial claims**
6 **period. If there is no judgment, claims must be filed within time limits prescribed pursuant**
7 **to section 516.120, RSMo, except for cases resulting in death, in which case claims must be**
8 **filed within time limits prescribed pursuant to section 537.100, except with regard to the**
9 **initial claims period.**

10 **3. With regard to the initial claims period, any claim may be filed that is based on**
11 **a judgment that has not expired or that is based on a claim not reduced to judgment for**
12 **a reason allowed by subsection 2 of section 537.678, and which would not be barred by the**
13 **applicable statute of limitations if the tortfeasor could be served with process or has not**
14 **taken bankruptcy.**

15 **4. Each claim shall be filed in person or by mail. The division shall investigate such**
16 **claim prior to the opening of formal proceedings. The director of the division shall assign**
17 **an administrative law judge, associate administrative law judge or legal advisor within the**
18 **division to hear any claim for compensation filed. The claimant shall be notified of the**
19 **date and time of any hearing on the claim. In determining the amount of compensation for**
20 **which a claimant is eligible, the division shall:**

21 **(1) Consider the facts stated on the application filed pursuant to section 537.678;**

22 (2) Obtain a copy of the final judgment, if any, from the appropriate court;

23 (3) Determine the amount of the loss to the claimant, or the victim's survivors or
24 dependents; and

25 (4) If there is no final judgment, determine the degree or extent to which the
26 victim's acts or conduct provoked, incited or contributed to the injuries or death of the
27 victim.

28 5. The claimant may present evidence and testimony on his or her own behalf or
29 may retain counsel.

30 6. Prior to any hearing, the person filing a claim shall submit reports, if available,
31 from all hospitals, physicians or surgeons who treated or examined the victim for the
32 injury for which compensation is sought. If, in the opinion of the division, an examination
33 of the injured victim or a report on the cause of death of the victim would be of material
34 aid, the division may appoint a duly qualified, impartial physician to make an examination
35 and report. A finding of the judge or jury in the underlying case shall be considered as
36 evidence.

37 7. Each and every payment shall be exempt from attachment, garnishment or any
38 other remedy available to creditors for the collection of a debt; provided that this section
39 shall not be construed to affect the right of any attorney who represents or represented any
40 claimant to collect any fee or expenses to which such attorney is entitled.

41 8. Payments of compensation shall not be made directly to any person legally
42 incompetent to receive them but shall be made to the parent, guardian or conservator for
43 the benefit of such minor, disabled or incapacitated person.

44 9. Payment of all claims from the fund shall be made on the following basis:

45 (1) With regard to claims made during the initial claims period, the division shall
46 determine the aggregate amount of all awards made on such claims. Such determination
47 shall be made on or before June 30, 2003. If the aggregate value of the awards do not
48 exceed the total amount of money in the fund, the awards shall be paid in full on or before
49 September 30, 2003. If the aggregate value of the awards exceed the total amount of money
50 in the fund, the awards shall be paid on a pro rata basis on or before September 30, 2003;

51 (2) With regard to all claims made after the initial claims period, the division shall
52 determine the aggregate amount of all awards made on such claims filed during an annual
53 claims period. Such determination shall be made on or before the thirtieth of June in the
54 next succeeding year. If the aggregate value of the awards do not exceed the total amount
55 of money in the fund, the awards shall be paid in full on or before the thirtieth of
56 September in the next succeeding year. If the aggregate value of the awards exceed the
57 total amount of money in the fund, the awards shall be paid on a pro rata basis on or

58 before the thirtieth of September in the next succeeding year.

59 **10. If there are no moneys available, no claim shall be paid until moneys have**
60 **accumulated in the tort victims' compensation fund and have been appropriated to the**
61 **division for payment to uncompensated tort victims. When sufficient moneys become**
62 **available for payment of claims of uncompensated tort victims, awards that have been**
63 **determined but have not been paid shall be paid in chronological order with the oldest paid**
64 **first, based upon the date on which the application was filed with the division. Any award**
65 **pursuant to this subsection that cannot be paid due to a lack of moneys appropriated for**
66 **payment of claims of uncompensated tort victims shall not constitute a claim against the**
67 **state.**

68 **11. If there are no moneys available for payment of claims, the division may**
69 **suspend all action related to valuing claims and granting awards until such time as moneys**
70 **in excess of one hundred thousand dollars have accumulated in the tort victims'**
71 **compensation fund, at which time the division shall resume its claim processing duties.**

537.687. 1. Upon request by the division for verification of injuries of victims, a
2 **medical provider shall submit medical records and other information requested by the**
3 **division. Any costs to the claimant for obtaining and providing such information may be**
4 **submitted as part of the claim.**

5 **2. Failure to submit the information as required by this section may be the basis for**
6 **rejection of a claim.**

537.690. 1. Any party to a decision of the division on a claim heard pursuant to the
2 **provisions of sections 537.675 to 537.693 may, within thirty days following the date of**
3 **notification or mailing of such decision, file a petition with the labor and industrial**
4 **relations commission to have the decision reviewed by the commission. The commission**
5 **may allow or deny a petition for review. If a petition is allowed, the commission may**
6 **affirm, reverse or set aside the decision of the division on the basis of the evidence**
7 **previously submitted in such case or may take additional evidence or may remand the**
8 **matter to the division with directions. The commission shall promptly notify the parties**
9 **of its decision and the reasons therefore.**

10 **2. Any petition for review filed pursuant to subsection 1 of this section shall be**
11 **deemed to be filed as of the date endorsed by the United States Postal Service on the**
12 **envelope or container in which such petition is received.**

13 **3. Any party who is aggrieved by a final decision of the commission entered**
14 **pursuant to the provisions of subsections 1 and 2 of this section may seek judicial review**
15 **thereof, as provided in sections 536.100 to 536.140, RSMo. In such proceedings the**
16 **attorney general, on behalf of the tort victims' compensation fund, shall defend the decision**

17 of the commission. The commission shall not be a party in such actions.

2 **537.693. 1. Payment of any compensation pursuant to sections 537.675 to 537.693**
3 **shall vest in the state of Missouri a right of subrogation to the extent of such compensation**
4 **paid, to any right or right of action of the claimant to recover payments with respect to**
5 **which the compensation has been paid and to enforce the underlying judgment against the**
6 **tortfeasor. The attorney general may enforce the subrogation interest, and may file suit**
7 **to enforce such right of subrogation.**

8 **2. The division shall have a lien on any compensation received by the claimant from**
9 **the tortfeasor or the tortfeasor's agent after payment by the division to the claimant, in**
10 **addition to compensation received pursuant to the provisions of sections 537.675 to**
11 **537.693, for injuries or death resulting from the incident upon which the claim is based.**
12 **The claimant shall retain, as trustee for the division, so much of the recovered moneys as**
13 **necessary to reimburse the Missouri tort victims' compensation fund to the extent that**
14 **compensation was paid to the claimant from that fund.**

15 **3. If a claimant initiates any legal proceeding to recover restitution or damages or**
16 **enforce the underlying judgment related to the tort upon which the claim is based, or if the**
17 **claimant enters into negotiations to receive any proceeds in settlement or a claim for**
18 **restitution or damages related to the tort, the claimant shall give the division written notice**
19 **within fifteen days of the filing of the action or entering into negotiations. The division**
20 **may intervene in the proceeding of a claimant to enforce his or her subrogation interest.**
21 **If a claimant fails to give such written notice to the division within the stated time period**
22 **or prior to any attempt by the claimant to reach a negotiated settlement of claims for**
23 **recovery of damages related to the tort upon which the claim is based, the division's right**
24 **of subrogation to receive or recover moneys from the claimant, to the extent that**
25 **compensation was awarded by the division, shall not be reduced in any amount or**
26 **percentage by the costs incurred by the claimant attributable to such legal proceedings or**
27 **settlement, including, but not limited to, attorney's fees, investigative costs or court costs;**
28 **however, if the claimant provides written notice to the division as required in this section,**
29 **the subrogation interest of the division shall be reduced by a percentage equal to the**
30 **percentage that the attorney's fees and expenses incurred by the claimant bears to the total**
31 **recovery.**

32 **4. Whenever the division shall deem it necessary to protect, maintain or enforce the**
33 **division's right to subrogation or to exercise any of its powers to carry out any of its duties**
34 **or responsibilities, the attorney general may initiate legal proceedings or intervene in legal**
35 **proceedings as the division's legal representative.**

5. The division is hereby granted authority to adopt rules and regulations,

36 consistent with the provisions of sections 537.678 to 537.693, which rules and regulations
37 may govern application for and distribution of those moneys appropriated to the division
38 from the tort victims' compensation fund.

39 **6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
40 **that is created under the authority delegated in subsection 5 of this section shall become**
41 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
42 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
43 **nonseverable and if any of the powers vested with the general assembly pursuant to**
44 **chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule**
45 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
46 **rule proposed or adopted after August 28, 2001, shall be invalid and void.**

47 **7. Subsections 2 and 3 of this section shall only apply to amounts actually received**
48 **by the claimant from any source which exceeds the total amount of the judgment.**